

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

FREDDIE FOUNTAIN §
v. § CIVIL ACTION NO. 6:13cv958
RICK THALER, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND DENYING MOTION TO REVOKE *IN FORMA PAUPERIS* STATUS

The Plaintiff Freddie Fountain, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights during his confinement in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Defendants have moved to revoke Fountain's *in forma pauperis* status under 28 U.S.C. §1915(g) based on strikes he acquired after the present lawsuit was filed. The Magistrate Judge issued a report recommending that the motion be denied. The Defendants have filed objections arguing, as they did in their motion, that the Court has inherent discretion to deny *in forma pauperis* status and that a re-evaluation of Fountain's pauper status is appropriate because he has an extensive history of abusive litigation.

The Court has conducted a careful *de novo* review of those portions of the Magistrate Judge's proposed findings and recommendations to which the Defendants objected. *See* 28 U.S.C. §636(b)(1) (district judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.") Upon such *de novo* review, the Court has determined that the report of the magistrate judge is correct. It is accordingly

ORDERED that the Defendants' objections are overruled and the report of the magistrate judge (docket no. 260) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the Defendants' motion to revoke Plaintiff's *in forma pauperis* status (docket no. 197) is **DENIED**. It is further

ORDERED that this Court is of the opinion, and so finds, that this order involves a controlling question or questions as to which there is substantial ground for difference of opinion and an immediate appeal from this order may materially advance the ultimate termination of the litigation. 28 U.S.C. §1292(b). The questions presented are whether the three-strikes provision of 28 U.S.C. §1915(g) may be applied to strikes issued after a case was filed and, more generally, the latitude given to the district court to revoke *in forma pauperis* status in a lawsuit based on the plaintiff's actions in other lawsuits or appeals taken after the original lawsuit was filed.

SIGNED this 7th day of March, 2016.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE